

**IN THE CLAIMS:**

1. (Currently Amended) An isolated nucleic acid selected from the group consisting of:

(a) ~~the isolated nucleic acids consisting essentially of a sequence according to~~ of SEQ ID NO: 1 or a an active fragment thereof, wherein said fragment is ~~between about 20-455~~ at least 200 consecutive nucleotides in length; and

(b) a nucleic acid sequence which is at least 95% identical to the nucleic acid sequence of (a).

~~(b) isolated nucleic acids that hybridize to the complement of SEQ ID NO:1 and are responsive to a *Nic* gene product.~~

2-3 (Canceled).

4. (Currently Amended) The isolated nucleic acid according to claim 1, wherein said nucleic acid is a DNA.

5. (Currently Amended) The isolated nucleic acid according to claim 1, further comprising a recombinant nucleic acid construct, wherein ~~said isolated nucleic acid is joined to said recombinant nucleic acid construct and~~ said recombinant nucleic acid construct does not contain a *NiQPT1* coding sequence.

6. (Currently Amended) The ~~isolated~~ recombinant nucleic acid construct according to claim 5, wherein said recombinant nucleic acid construct is linear.

7. (Currently Amended) The ~~isolated~~ recombinant nucleic acid construct according to claim 5, wherein said recombinant nucleic acid construct is circular.

8. (Currently Amended) ~~The isolated nucleic acid~~ A microparticle coated with the isolated nucleic acid construct according to claim 1, ~~further comprising a~~

~~micropartiele~~, wherein ~~said isolated nucleic acid is joined to~~ said micropartiele is suitable for transformation of a plant cell.

9. (Currently Amended) The ~~isolated~~ recombinant nucleic acid construct according to claim 5, wherein said recombinant nucleic acid construct is an *Agrobacterium* vector.

10. (Original) A plant cell comprising the isolated nucleic acid according to claim 1.

11. (Currently Amended) A method of making a transgenic tobacco plant having a reduced amount of nicotine, comprising:

introducing a nucleic acid consisting essentially of a *Nic* gene product responsive element into at least one tobacco plant cell so as to produce at least one transformed tobacco plant cell,

wherein said at least one transformed tobacco plant cell ~~containing~~ comprises said nucleic acid in a copy number sufficient to reduce the amount of nicotine in a tobacco plant regenerated from said cell as compared to the amount of nicotine that would be present in the absence of said nucleic acid; and

regenerating said at least one transformed tobacco plant cell so as to obtain said tobacco plant.

12. (Currently Amended) The method of claim 11, further comprising:

collecting tobacco leaves from said tobacco plant, wherein said tobacco leaves ~~containing~~ have a reduced amount of nicotine as compared to the amount of nicotine that would be present in said tobacco plant in the absence of said nucleic acid.

13. (Currently Amended) The method according to claim 11, further comprising:

collecting tobacco seed from said tobacco plant, wherein said tobacco seed ~~containing~~ comprises said nucleic acid in a copy number sufficient to reduce the

amount of nicotine ~~of~~ in a tobacco plant ~~regenerated~~ produced from said seed as compared to the amount of nicotine that would be present in the absence of said nucleic acid.

14. (Currently Amended) The method according to claim 11, wherein said *Nic* gene product responsive element is selected from the group consisting of:

(a) ~~the~~ isolated nucleic acids consisting essentially of a sequence according to of SEQ ID NO: 1 or a an active fragment thereof, wherein said fragment is between about 20-455 comprises 20 to 455 consecutive nucleotides of SEQ ID NO: 1;

(b) a nucleic acid sequence which is at least 95% identical to the nucleic acid sequence of (a); and

~~(b)~~ (c) an isolated nucleic acids that hybridizes under stringent conditions to the complement of SEQ ID NO:1 and are is responsive to a *Nic* gene product.

15. (Original) The method according to claim 11, wherein said *Nic* gene product responsive element consists of the sequence given herein as **SEQ ID NO:1**.

16. (Currently Amended) The method according to claim 11, wherein said nucleic acid is contained within a recombinant nucleic acid construct, ~~wherein said isolated nucleic acid is joined to said recombinant nucleic acid construct, and~~ said recombinant nucleic acid construct does not contain a *NiQPT1* coding sequence, and said recombinant construct is linear.

17. (Original) The method according to claim 16, wherein said recombinant nucleic acid construct is circular.

18. (Currently Amended) The method according to claim 11, wherein said nucleic acid is a DNA.

19. (Original) The method according to claim 11, wherein said introducing step comprises ballistic transformation.

20. (Original) The method according to claim 11, wherein said introducing step comprises *Agrobacterium* transformation.

21. (Original) A tobacco plant produced by the method of claim 11.

22. (Currently Amended) A tobacco leaf collected from a the tobacco plant of claim 21.

23. (Currently Amended) A tobacco seed collected from a the tobacco plant of claim 21, wherein said seed comprises a nucleic acid consisting essentially of a *Nic* gene product responsive element.

24. (Currently Amended) A tobacco plant having a reduced amount of nicotine therein, wherein said plant ~~comprising~~ comprises cells ~~containing~~ comprising an exogenous nucleic acid, wherein said exogenous nucleic acid consists essentially of a *Nic* gene product responsive element; said exogenous nucleic acid contained in said cells in a copy number sufficient to reduce the amount of nicotine in said tobacco plant as compared to the amount of nicotine that would be present in said plant in the absence of said exogenous nucleic acid.

25. (Currently Amended) A The tobacco plant according to claim 24, wherein said *Nic* gene product responsive element is selected from the group consisting of:

(a) ~~the isolated nucleic acids consisting essentially of a~~ sequence according to of SEQ ID NO: 1 or a an active fragment thereof, wherein said fragment ~~is between about 20-455~~ comprises 20 to 455 consecutive nucleotides of SEQ ID NO: 1;

(b) a nucleic acid sequence which is at least 95% identical to the nucleic acid sequence of (a); and

~~(b)~~ (c) an isolated nucleic acids that hybridizes under stringent conditions to the complement of SEQ ID NO:1 and ~~are~~ is responsive to a *Nic* gene product.

26. (Currently Amended) ~~A~~ The tobacco plant according to claim 24, wherein said *Nic* gene product responsive element consists essentially of the sequence given herein as **SEQ ID NO:1**.

27. (Currently Amended) ~~A~~ The tobacco plant according to claim 24, wherein said exogenous nucleic acid is contained within a recombinant nucleic acid construct, wherein ~~said isolated nucleic acid is joined to said recombinant nucleic acid construct,~~ said recombinant nucleic acid construct does not contain a *NtQPT1* coding sequence, and said recombinant construct is linear.

28. (Currently Amended) ~~A~~ The tobacco plant according to claim 27, wherein said recombinant nucleic acid construct is circular.

29. (Currently Amended) ~~A~~ The tobacco plant according to claim 24, wherein said exogenous nucleic acid is a DNA.

30. (Currently Amended) ~~Tobacco~~ A tobacco leaf collected from a the tobacco plant of claim 24.

31. (Currently Amended) ~~Tobacco~~ A tobacco seed that germinates into a the tobacco plant of claim 24.

32. (Currently Amended) ~~Tobacco~~ A tobacco seed collected from a the tobacco plant of claim 24, wherein said seed comprises cells comprising an exogenous nucleic acid consisting essentially of a *Nic* gene product responsive element.

33. (Withdrawn) A method of making a plant having an altered content of a protein of interest therein, wherein said protein of interest is regulated by a *cis*-acting element, said method comprising the steps of:

introducing an exogenous nucleic acid construct comprising said *cis*-acting element into at least one plant cell to produce at least one transformed plant cell,

said at least one transformed plant cell containing said exogenous nucleic acid in a copy number sufficient to increase or reduce the level of said protein of interest in a plant regenerated from said cells as compared to the amount of said protein of interest that would be present in the absence of said exogenous nucleic acid, subject to the proviso that said *cis*-acting element is not operably linked to a coding sequence or complement thereof for said protein of interest.

34. (Withdrawn) The method according to claim 33, wherein said *cis* acting element is a *cis*-acting activating element that binds an activator compound, which activator compound increases expression of said protein of interest in said plant, and with said at least one transformed plant cell containing said exogenous nucleic acid in a copy number sufficient to reduce the level of said protein of interest in a plant regenerated from said cells as compared to the amount of said protein of interest that would be present in the absence of said exogenous nucleic acid.

35. (Withdrawn) The method according to claim 33, wherein said *cis*-acting element is a *cis*-acting repressor element that binds a repressor compound, which repressor compound decreases expression of said protein of interest in said plant, and with said at least one transformed plant cell containing said exogenous nucleic acid in a copy number sufficient to increase the level of said protein of interest in a plant regenerated from said cells as compared to the amount of said protein of interest that would be present in the absence of said exogenous nucleic acid.

36. (Withdrawn) The method according to claim 33, further comprising:  
generating a plant from said transformed plant cells

37. (Withdrawn) The method according to claim 36, further comprising:  
collecting seed from said plant, said seed containing said exogenous nucleic acid in a copy number sufficient to reduce the level of said protein of interest in a

plant regenerated from said seed as compared to the level of said protein of interest that would be present in the absence of said exogenous nucleic acid.

38. (Withdrawn) The method according to claim 33, wherein said *cis*-acting element is selected from the group consisting of UAS-1, the vicilin box, site B, and the tobacco RB7 promoter root-specific *cis*-acting element.

39. (Withdrawn) The method according to claim 33, wherein said exogenous nucleic acid is linear.

40. (Withdrawn) The method according to claim 33, wherein said exogenous nucleic acid is circular.

41. (Withdrawn) The method according to claim 33, wherein said exogenous nucleic acid is a DNA.

42. (Withdrawn) The method according to claim 33, wherein said introducing step comprises ballistic transformation.

43. (Withdrawn) The method according to claim 33, wherein said introducing step comprises *Agrobacterium* transformation.

44. (Withdrawn) A plant produced by the method of claim 33.

45. (Withdrawn) Leaves, fruit, flowers, roots or tubers collected from a plant of claim 44.

46. (Withdrawn) Seed collected from a plant of claim 44.

47. (Withdrawn) A plant having altered levels of a protein of interest therein, said plant comprising cells containing an exogenous nucleic acid,

which exogenous nucleic acid comprises a *cis*-acting element that regulates the level of said protein of interest in said plant,

said cells containing said exogenous nucleic acid in a copy number sufficient to increase or reduce the level of said protein of interest in said plant as compared to the amount of said protein of interest that would be present in the absence of said exogenous nucleic acid, subject to the proviso that said *cis*-acting element is not operably linked to a coding sequence or complement thereof for said protein of interest.

48. (Withdrawn) The plant according to claim 47, wherein said *cis* acting element is a *cis*-acting activating element that binds an activator compound, which activator compound increases expression of said protein of interest in said plant, and with said at least one transformed plant cell containing said exogenous nucleic acid in a copy number sufficient to reduce the level of said protein of interest in said plant as compared to the amount of said protein of interest that would be present in the absence of said exogenous nucleic acid.

49. (Withdrawn) The plant according to claim 47, wherein said *cis*-acting element is a *cis*-acting repressor element that binds a repressor compound, which repressor compound decreases expression of said protein of interest in said plant, and with said at least one transformed plant cell containing said exogenous nucleic acid in a copy number sufficient to increase the level of said protein of interest in said plant as compared to the amount of said protein of interest that would be present in the absence of said exogenous nucleic acid.

50. (Withdrawn) The plant according to claim 47, wherein said exogenous nucleic acid is linear.

51. (Withdrawn) The plant according to claim 47, wherein said exogenous nucleic acid is circular.



52. (Withdrawn) The plant according to claim 47, wherein said exogenous nucleic acid is a DNA.

53. (Withdrawn) Leaf, fruit, flowers, roots or tubers collected from a plant of claim 47.

54. (Withdrawn) Seed that germinates into a plant of claim 47.

55. (Withdrawn) Seed collected from a plant of claim 47.

56. (Withdrawn) A method of decreasing expression of a protein of interest in a host cell, wherein transcription of said protein of interest is enhanced by a *cis*-acting activating element that binds an activator compound, which activator compound increases expression of said protein of interest in said host cell, said method comprising the steps of:

(a) providing a decoy recombinant nucleic acid construct comprising said *cis*-acting activating element; and

(b) introducing said decoy construct into said host cell in an amount sufficient to bind said activator compound and reduce expression of said protein of interest, subject to the proviso that said *cis*-acting element is not operably linked to a coding sequence or complement thereof for said protein of interest..

57. (Withdrawn) The method according to claim 56, wherein said host cell is a prokaryotic or eukaryotic cell.

58. (Withdrawn) The method according to claim 56, wherein said host cell is a bacterial cell.

59. (Withdrawn) The method according to claim 56, wherein said host cell is a fungi cell.

60. (Withdrawn) The method according to claim 56, wherein said host cell is an animal cell.

61. (Withdrawn) The method according to claim 56, wherein said host cell is a mammalian cell.

62. (Withdrawn) The method according to claim 56, wherein said host cell is a vascular plant cell.

63. (Withdrawn) The method according to claim 56, wherein said host cell is a monocot or dicot plant cell.

64. (Withdrawn) The method according to claim 56, wherein said decoy construct is a plasmid.

65. (Withdrawn) A method of increasing expression of a protein of interest in a host cell, wherein transcription of said protein of interest is reduced by a *cis*-acting repressor element that binds a repressor compound, which repressor compound reduces expression of said protein of interest in said host cell, said method comprising the steps of:

(a) providing a decoy recombinant nucleic acid construct comprising said *cis*-acting activating element; and

(b) introducing said decoy construct into said host cell in an amount sufficient to bind said activator compound and increase expression of said protein of interest, subject to the proviso that said *cis*-acting element is not operably linked to a coding sequence or complement thereof for said protein of interest..

66. (Withdrawn) The method according to claim 65, wherein said host cell is a prokaryotic or eukaryotic cell.

67. (Withdrawn) The method according to claim 65, wherein said host cell is a bacterial cell.

68. (Withdrawn) The method according to claim 65, wherein said host cell is a fungi cell.

69. (Withdrawn) The method according to claim 65, wherein said host cell is an animal cell.

70. (Withdrawn) The method according to claim 65, wherein said host cell is a mammalian cell.

71. (Withdrawn) The method according to claim 65, wherein said host cell is a vascular plant cell.

72. (Withdrawn) The method according to claim 65, wherein said host cell is a monocot or dicot plant cell.

73. (Withdrawn) The method according to claim 65, wherein said decoy construct is a plasmid.